

STATE OF INDIANA) IN THE VIGO Vigo Superior Court 1 COURT
) SS:
COUNTY OF VIGO) CAUSE NO. **84D01-2107-CT-004178**

NANCY GARRARD

VS.

KROGER LIMITED PARTNERSHIP I

COMPLAINT FOR DAMAGES

Comes now the plaintiff, Nancy Garrard, by counsel, Ken Nunn Law Office, and for cause of action against the defendant, Kroger Limited Partnership I, alleges and says:

1. That on or about April 8, 2021, the plaintiff, Nancy Garrard, was a customer at the Kroger store located at 4714 South US Highway 41 in Terre Haute, Vigo County, Indiana.

2. That on or about April 8, 2021, the plaintiff, Nancy Garrard, slipped and fell in liquid on the floor at said location, causing the plaintiff to suffer serious injuries.

3. That it was the duty of the defendant to use ordinary care and diligence to keep and maintain the said premises in a condition reasonably safe for its intended uses and free from all defects and conditions which would render the premises dangerous and unsafe for plaintiff, or present an unreasonable risk of harm to plaintiff in her lawful use of same.

4. That it was the duty of the defendant to exercise reasonable care to protect plaintiff, by inspection and other affirmative acts, from the danger of reasonably foreseeable injury occurring from reasonably foreseeable use of said premises.

5. That it was the duty of the defendant to have available sufficient personnel and equipment to properly inspect and maintain the aforesaid premises in a condition reasonably safe for plaintiff and free from defects and conditions rendering the premises unsafe.

6. That it was the duty of the defendant to warn plaintiff of the dangerous and unsafe condition existing on said premises.

7. That the defendant knew or should have known of the unreasonable risk of danger to the plaintiff but failed either to discover it or to correct it after discovery.

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8. That the fall and resultant permanent injuries of plaintiff were caused by the negligence of the defendant who failed to utilize reasonable care in the inspection and maintenance of said premises.

9. That the aforesaid acts of negligence on the part of the defendant were the proximate cause of the injuries sustained by the plaintiff.

10. That the plaintiff has incurred medical expenses and other special expenses, and will incur future medical expenses, lost wages and other special expenses, as a direct and proximate result of defendant's negligence.

WHEREFORE, the plaintiff demands judgment against the defendant for permanent injuries in a reasonable amount to be determined at the trial of this cause, for medical expenses and other special expenses, for future medical expenses, lost wages and other special expenses, court costs, and all other proper relief in the premises.

KEN NUNN LAW OFFICE

BY: s/ Daniel Gore
Daniel Gore, #31322-53
KEN NUNN LAW OFFICE
104 South Franklin Road
Bloomington, IN 47404
Phone: (812) 332-9451
Fax: (812) 331-5321
E-mail: dgore@kennunn.com

REQUEST FOR TRIAL BY JURY

Comes now the plaintiff, by counsel, Ken Nunn Law Office, and requests that this matter be tried by jury pursuant to Trial Rule 38.

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Daniel Gore, #31322-53
Ken Nunn Law Office
104 South Franklin Road
Bloomington, IN 47404
Telephone: 812-332-9451
Fax Number: 812-331-5321
Attorney for Plaintiff

APPEARANCE FORM (CIVIL)**Initiating Party**

Vigo Superior Court 1

CAUSE NO: 84D01-2107-CT-004178	
1. Name of first initiating party	Nancy Garrard 8049 Nene Court Terre Haute, IN 47805
2. Telephone of pro se initiating party	NA
3. Attorney information (as applicable for service of process)	Daniel Gore #31322-53 Ken Nunn Law Office 104 South Franklin Road Bloomington, IN 47404 PHONE: 812 332-9451 FAX: 812 331-5321 Email: dgore@kennunn.com
4. Case type requested	CT (Civil Tort)
5. Will accept FAX service	YES
6. Are there related cases	NO
7. Additional information required by State or Local Rules	
Continuation of Item 1 (Names of initiating parties)	NAME: NAME:
Continuation of Item 3 (Attorney information as applicable for service of process)	

s/Daniel Gore
Attorney-at-Law
(Attorney information shown above.)

CIRCUIT AND SUPERIOR COURTS FOR THE COUNTY OF VIGO
STATE OF INDIANA
COURTHOUSE, 33 SOUTH 3RD STREET
TERRE HAUTE, INDIANA 47807

Nancy Garrard

Plaintiff(s)

VS.

No. **84D01-2107-CT-004178**
~~Vigo Superior Court 1~~

Kroger Limited Partnership I

Defendant(s)

SUMMONS

The State of Indiana to Defendant: **Kroger Limited Partnership I, c/o Corporation Service Company, 135 North Pennsylvania Street, Suite 1610, Indianapolis, IN 46204**

You have been sued by the person(s) named "plaintiff" in the court stated above.

The nature of the suit against you is stated in the complaint which is attached to this document. It also states the demand which the plaintiff has made and wants from you.

You must answer the complaint in writing, by you or your attorney, within Twenty (20) days, commencing the day after you receive this summons, or judgment will be entered against you for what the plaintiff has demanded. You have twenty-three (23) days to answer if this summons was received by mail. **Such Answer Must Be Made In Court.**

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

Date: 7/22/2021


CLERK, VIGO CIRCUIT/SUPERIOR COURTS
MB

DANIEL GORE, #31322-53
ATTORNEY FOR PLAINTIFF
KEN NUNN LAW OFFICE
104 FRANKLIN ROAD
BLOOMINGTON, IN 47404
TELEPHONE: (812)332-9451



ACKNOWLEDGMENT OF SERVICE OF SUMMONS

A copy of the above summons and a copy of the complaint attached thereto were received by me at _____ this ____ day of _____, 2021.

SIGNATURE OF DEFENDANT

PRAECIPE: I designate the following mode of service to be used by the Clerk.

- XX By certified or registered mail with return receipt to above address.
- ☐ By Sheriff delivering a copy of summons and complaint personally to defendant or by leaving a copy of the summons and complaint at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein.
- ☐ By _____ delivering a copy of summons and complaint personally to defendant or by leaving a copy of the summons and complaint at his dwelling house or usual place of abode.
- ☐ By serving his agent as provided by rule, statute or valid agreement, to-wit:

KEN NUNN LAW OFFICE

BY: s/ DANIEL GORE
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF MAILING: I certify that on the __ day of _____, 2021, I mailed a copy of this summons and a copy of the complaint to each of the defendant(s) by (registered or certified mail requesting a return receipt signed by the addressee only, addressed to each of said defendant(s) at the address(es) furnished by plaintiff.

Dated this __ day of _____, 2021.

CLERK, VIGO CIRCUIT/SUPERIOR COURTS

RETURN OF SERVICE OF SUMMONS BY MAIL: I hereby certify that service of summons with return receipt requested was mailed on the __ day of _____, 2021, and that a copy of the return of receipt was received by me on the __ day of _____, 2021, which copy is attached herewith.

CLERK, VIGO CIRCUIT/SUPERIOR COURTS

CERTIFICATE OF CLERK OF SUMMONS NOT ACCEPTED BY MAIL: I hereby certify that on the __ day of _____, 2021, I mailed a copy of this summons and a copy of the complaint to the defendant(s) by (registered or certified) mail, and the same was returned without acceptance this __ day of _____, 2021, and I did deliver said summons and a copy of the complaint to the Sheriff of Vigo County, Indiana.

Dated this __ day of _____, 2021.

CLERK, VIGO CIRCUIT/SUPERIOR COURTS

RETURN OF SUMMONS: This summons came to hand on the __ day of _____, 2021, and I served the same on the __ day of _____, 2021.

1. By mailing a copy of the summons and complaint personally to _____ address _____.
2. By delivering a copy of summons and complaint personally to _____.
3. By leaving a copy of the summons and complaint at _____ t he dwelling house or usual place of abode of defendant: _____ (Na me of Person) and by mailing by first class mail a copy of the summons on the __ day of _____, 2021 to _____ h is last known address.
4. By serving his agent as provided by rule, statute or valid agreement to-wit: _____.
5. Defendant cannot be found in my bailwick and summons was not served.

And I now return this writ this __ day of _____, 2021.

SHERIFF or DEPUTY

RETURN ON SERVICE OF SUMMONS: I hereby certify that I have served the within summons:

1. By delivery on the __ day of _____, 2021 a copy of this summons and a copy of the complaint to each of the within named defendant(s) _____.
2. By leaving on the __ day of _____, 2021 _____ a copy of the summons and a copy of the complaint at the respective dwelling house or usual place of abode with _____ a person of suitable age and discretion residing therein whose usual duties or activities include prompt communication of such information to the person served.

3. _____ a nd by mailing a copy of the summons without the complaint to _____ a t _____ t he last known address of defendant(s).

All done in Vigo County, Indiana.

Fees: \$ _____

SHERIFF or DEPUTY

IN THE VIGO COUNTY SUPERIOR COURT NO. 1

NANCY GARRARD,)
)
 Plaintiff,) CAUSE NO. 84D01-2107-CT-004178
)
 v.)
)
 KROGER LIMITED PARTNERSHIP I,)
)
 Defendant.)

APPEARANCE FORM

Party Classification: Initiating ☐ Responding ☒ Intervening ☐

1. The undersigned attorney and all attorneys listed on this form now appear in this case for the following party member(s): Defendant Kroger Limited Partnership I.
2. Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

Name: Donald B. Kite, Sr., #11601-41	Phone: 317.697-5046
Address: 8082 Stafford Lane	Fax:
Indianapolis, IN 46204	Email: don.kite@gmail.com

3. There are other party members: Yes ____ No X (If yes, list on continuation page.)
4. If first initiating party filing this case, the Clerk is requested to assign this case the following Case Type under Administrative Rule 8(b)(3): _____
5. I will accept service by FAX at the above noted number: Yes ____ No X
6. This case involves support issues: Yes ____ No X
7. There are related cases: Yes ____ No X (If yes, list on continuation page.)
8. This form has been served on all other parties and Certificate of Service is attached: Yes ☒ No ☐

Respectfully submitted,

/s/ Donald B. Kite, Sr.
Donald B. Kite, Sr., #11601-41
Attorney for Defendant
Kroger Limited Partnership I

CERTIFICATE OF SERVICE

I certify that on August 12, 2021, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that on August 12, 2021, the foregoing document was served upon the following persons by IEFS:

Daniel Gore, #31322-53
KEN NUNN LAW OFFICE
104 S. Franklin Road
Bloomington, IN 47404

/s/ Donald B. Kite, Sr.
Donald B. Kite, Sr.

ATTORNEY AT LAW
8082 Stafford Lane
Indianapolis, IN 46260

IN THE VIGO COUNTY SUPERIOR COURT NO. 1

NANCY GARRARD,)	
)	
Plaintiff,)	CAUSE NO. 84D01-2107-CT-004178
)	
v.)	
)	
KROGER LIMITED PARTNERSHIP I,)	
)	
Defendant.)	

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES

Defendant Kroger Limited Partnership I, by counsel, for its Answer to Plaintiff's Complaint for Damages states:

1. Defendant Kroger Limited Partnership I admits that on April 8, 2021, the Plaintiff, Nancy Garrard, was present in the Kroger store which is located at 4714 South US Highway 31, Terre Haute, Vigo County, Indiana. However, the Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations which are contained in rhetorical paragraph 1 of Plaintiff's Complaint for Damages.

2. Defendant Kroger Limited Partnership I admits that on April 8, 2021, the Plaintiff reported that she slipped and fell. However, the Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations which are contained in rhetorical paragraph 2 of Plaintiff's Complaint for Damages.

3. Inasmuch as the allegations which are contained within rhetorical paragraph 3 of Plaintiff's Complaint for Damages constitute legal allegations rather than factual averments, Defendant Kroger Limited Partnership I makes no response to the same.

4. Inasmuch as the allegations which are contained within rhetorical paragraph 4 of Plaintiff's Complaint for Damages constitute legal allegations rather than factual averments, Defendant Kroger Limited Partnership I makes no response to the same.

5. Inasmuch as the allegations which are contained within rhetorical paragraph 5 of Plaintiff's Complaint for Damages constitute legal allegations rather than factual averments, Defendant Kroger Limited Partnership I makes no response to the same.

6. Inasmuch as the allegations which are contained within rhetorical paragraph 6 of Plaintiff's Complaint for Damages constitute legal allegations rather than factual averments, Defendant Kroger Limited Partnership I makes no response to the same.

7. Defendant Kroger Limited Partnership I denies the allegations which are contained in rhetorical paragraph 7 of Plaintiff's Complaint for Damages.

8. Defendant Kroger Limited Partnership I denies the allegations which are contained in rhetorical paragraph 8 of Plaintiff's Complaint for Damages.

9. Defendant Kroger Limited Partnership I denies the allegations which are contained in rhetorical paragraph 9 of Plaintiff's Complaint for Damages.

10. Defendant Kroger Limited Partnership I denies the allegations which are contained in rhetorical paragraph 10 of Plaintiff's Complaint for Damages.

AFFIRMATIVE DEFENSES

Subject to further discovery, Defendant Kroger Limited Partnership I asserts the following affirmative defenses:

1. The Plaintiff's damages, if any, should be barred or reduced as a result of the Plaintiff's comparative fault.

2. To the extent that the Plaintiff receives or has received payments for her alleged injuries and damages, any such payments constitute satisfaction and must be set-off against any recoveries made in this litigation against Defendant Kroger Limited Partnership I.

3. The Plaintiff has failed to mitigate her damages.

4. The Plaintiff's damages, if any, should be barred or reduced with respect to Defendant Kroger Limited Partnership I inasmuch as said damages are attributable, in whole or in part, to the negligence of a non-party whose identity is presently unknown.

WHEREFORE, Defendant Kroger Limited Partnership I prays for judgment in its favor, for its costs incurred in defending this action, and for all other appropriate relief.

Respectfully submitted,

/s/ Donald B. Kite, Sr.

Donald B. Kite, Sr., #11601-41

Attorney for Defendant

Kroger Limited Partnership I

CERTIFICATE OF SERVICE

I certify that on August 19, 2021, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that on August 19, 2021, the foregoing document was served upon the following persons by IEFS:

Daniel Gore, #31322-53
KEN NUNN LAW OFFICE
104 S. Franklin Road
Bloomington, IN 47404

/s/ Donald B. Kite, Sr.

Donald B. Kite, Sr.

ATTORNEY AT LAW
8082 Stafford Lane
Indianapolis, IN 46260

STATE OF INDIANA)
) SS:
COUNTY OF VIGO) CAUSE NO. 84D01-2107-CT-4178

NANCY GARRARD,

Plaintiff,

-vs-

KROGER LIMITED PARTNERSHP I,

Defendant.

COURT'S INITIAL PRE-TRIAL ORDER

Pursuant to Trial Rule 16 of the Indiana Rules of Trial Procedure, and LR84-TR16-5, the court enters the following Initial Pre-Trial Order.

1. The court finds that the issues have been closed and makes a preliminary determination that jurisdiction is proper.

2. The parties shall immediately commence discovery if they have not done so already.

3. The parties shall file and serve on all other parties a preliminary list of witnesses, exhibits and specific contentions (including injuries and damages) no later than thirty (30) days after entry of this Order.

4. All motions for leave to amend the pleadings and/or to join additional parties shall be filed no later than ninety (90) days after entry of this order.

5. The parties shall each file, or jointly file, a pre-trial report no later than one hundred twenty (120) days after entry of this Order. The pre-trial report shall contain the following.

- a. A brief summary of the nature of the case (including any non-binding observations about whether liability is contested).
- b. An estimate of days required for trial.

- c. Whether or not an agreement exists as to the selection of a mediator. In the event of no agreement, a striking panel will be named consistent with LR84-TR16-6.
- d. An estimate as to additional time needed to complete discovery necessary for trial.
- e. Any amendments to a party's list of witnesses and exhibits necessary for trial.
- f. Any anticipated pre-trial motions, including dispositive motions (such as motions to dismiss or for summary judgment) and anticipated trial motions such as motions in limine).
- g. A summary of any proposed stipulations or ones agreed upon by the parties.

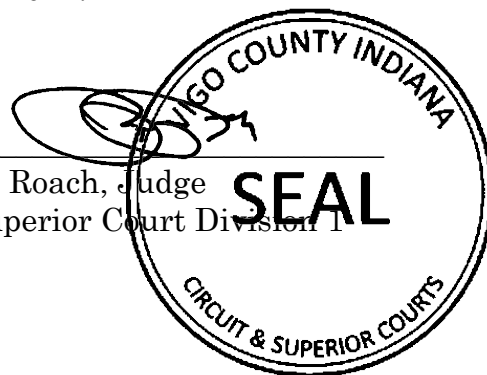
6. Upon compliance with the foregoing provisions, either party may request the court to schedule a telephone conference for determination of a trial date. The court will then enter a formal Pre-trial Conference order setting forth final deadlines for discovery, disclosure of contentions, witnesses, and exhibits, pre-trial motions, and such other matters as the court deems necessary in management of the case.

7. Nothing in this Order shall preclude the parties from accelerating discovery as appropriate or convening mediation prior to filing a pre-trial report. A party shall not, however, request a pre-trial conference or scheduling conference without complying with this Order.

8. Any party failing to exercise good faith in complying with the terms of this order is subject to sanctions.

SO ORDERED this 19th day of August, 2021.

John T. Roach, Judge
Vigo Superior Court Division I



JM

Distribution:

Counsel of Record

STATE OF INDIANA) IN THE VIGO SUPERIOR COURT
) SS:
COUNTY OF VIGO) CAUSE NO. 84D01-2107-CT-004178

NANCY GARRARD

VS.

KROGER LIMITED PARTNERSHIP I

MOTION FOR MEDIATION ORDER

Comes now the plaintiff, by counsel, Daniel Gore, and respectfully requests that the Court enter an Order requiring the parties to mediate this case.

Respectfully submitted,
KEN NUNN LAW OFFICE

BY: */s/ Daniel Gore* _____
Daniel Gore, 31322-53
Attorney for Plaintiff, Nancy Garrard

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, personally delivered or filed electronically a copy of this motion to Donald B. Kite, Sr., Attorney At Law, 8082 Stafford Lane, Indianapolis, IN 46260, on this 27th day of August, 2021.

/s/ Daniel Gore _____
Daniel Gore, 31322-53
Attorney for Plaintiff, Nancy Garrard

Daniel Gore, 31322-53
Attorney for Plaintiff, Nancy J. Garrard
KEN NUNN LAW OFFICE
104 South Franklin Road
Bloomington, IN 47404
Telephone: (812) 332-9451
Fax: (812) 331-5321

STATE OF INDIANA) IN THE VIGO SUPERIOR COURT
) SS:
COUNTY OF VIGO) CAUSE NO. 84D01-2107-CT-004178

NANCY GARRARD

VS.

KROGER LIMITED PARTNERSHIP I

MOTION FOR TRIAL DATE

Comes now the plaintiff, by counsel, Daniel Gore, and respectfully requests as follows:

1. That this matter be set for jury trial.
2. That the date be established by the Court at the telephonic pre-trial conference
that is being requested simultaneously with the filing of this Motion.

Respectfully submitted,
KEN NUNN LAW OFFICE

BY: */s/ Daniel Gore* _____
Daniel Gore, 31322-53
Attorney for Plaintiff, Nancy Garrard

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, personally delivered or filed electronically a copy of this motion to Donald B. Kite, Sr., Attorney At Law, 8082 Stafford Lane, Indianapolis, IN 46260 on this 27th day of August, 2021.

/s/ Daniel Gore _____
Daniel Gore, 31322-53
Attorney for Plaintiff, Nancy Garrard

Daniel Gore, 31322-53
KEN NUNN LAW OFFICE
104 South Franklin Road
Bloomington, IN 47404
Telephone: (812) 332-9451
Fax: (812) 331-5321

STATE OF INDIANA)
COUNTY OF VIGO) SS: IN THE VIGO SUPERIOR COURT
NANCY GARRARD) CAUSE NO. 84D01-2107-CT-004178

VS.

KROGER LIMITED PARTNERSHIP I

MOTION FOR PRE-TRIAL CONFERENCE

Comes now the plaintiff, by counsel, Daniel Gore, and respectfully requests the Court to set a telephonic pre-trial conference in this cause of action, in order to set appropriate trial deadlines.

Respectfully submitted,
KEN NUNN LAW OFFICE

BY: /s/ Daniel Gore
Daniel Gore, 31322-53
ATTORNEY FOR PLAINTIFF, Nancy Garrard

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, personally delivered or filed electronically a copy of this motion to Donald B. Kite, Sr., Attorney At Law, 8082 Stafford Lane, Indianapolis, IN 46260 on this 27th day of August, 2021.

/s/ Daniel Gore
Daniel Gore, 31322-53
Attorney for Plaintiff, Nancy Garrard

Daniel Gore, 31322-53
Attorney for Plaintiff, Nancy Garrard
Ken Nunn Law Office
104 South Franklin Road
Bloomington, IN 47404
Telephone: (812) 332-9451
Fax: (812) 331-5321